

# Challenge Process Frequently Asked Questions

BroadbandOhio

Ohio

Department of  
Development

**Question:** What is the due date to submit challenges?

**Answer:** A challenging provider may challenge, in writing, all or part of a completed application for a program grant for the project not later than sixty-five days after the close of the submission period. The due date to submit a challenge to an application submitted in the application period is January 12, 2022.

**Question:** When can challenges be submitted to Development?

**Answer:** Challenges can be submitted to Development after the completed applications are posted to the website.

**Questions:** Is there a specific form providers need to use to submit challenges?

**Answer:** Yes, the form can be found on the BroadbandOhio website under the Challenge Process Tab.

**Question:** What does it mean to be a "challenging provider"?

**Answer:** A "challenging provider" means either of the following:

- (1) A broadband provider that provides tier two broadband service within or directly adjacent to an eligible project;
- (2) A municipal electric utility that provides tier two broadband service to an area within the eligible project that is within the geographic area served by the municipal electric utility.

**Question:** How should a challenging provider contact the applicant in which they are going to challenge?

**Answer:** The challenging provider will need to submit a written copy of the challenge to the Department of Development and to the broadband provider that submitted the application, by certified mail. The copy provided to the Department of Development may include any information the challenging provider considers to be proprietary or a trade secret. The challenging provider may redact proprietary information or trade secrets from the copy provided to the broadband provider that submitted the application.

**Question:** What evidence needs to be provided when challenging an application?

**Answer:** The challenging provider will need to do the following:

- Submit and complete the Challenge Process Form found on the BroadbandOhio website at [broadband.ohio.gov](http://broadband.ohio.gov).
- Additionally, provide sufficient evidence to the Department of Development demonstrating that all or part of a project under the application is ineligible for a grant. The challenge shall, at minimum, include the following information:
  - Sufficient evidence disputing the notarized letter of intent submitted with the application that the eligible project contains unserved or tier one areas;
  - Sufficient evidence attesting to the challenging provider's existing or planned offering of tier two broadband service to all or part of the eligible project, which evidence shall include the following:
    - (a) With regard to existing tier two broadband service, a signed, notarized statement submitted by the challenging provider that sufficiently identifies the part of the eligible project to which the challenging provider offers broadband service;
    - (b) With regard to the planned provision of tier two broadband service by a challenging provider as described in division (B) of section 122.4016 of the Revised Code, both of the following:
      - (i) A signed, notarized statement submitted by the challenging provider that sufficiently identifies the part of the eligible project to which the challenging provider will offer broadband service;
      - (ii) A summary of the construction efforts that includes the dates when tier two broadband construction is expected to be completed and when tier two broadband service will first be offered to the part of the eligible project being challenged.
  - To demonstrate that all or part of a project under the application is ineligible for a grant, a challenging provider may present shapefile data, residential addresses, maps, or similar geographic details. Census block or census tract level data shall not be acceptable as evidence of ineligibility of all or part of a project.

**Question:** What is the timeframe for the Department of Development to respond to a challenge?

**Answer:** No later than 30 days after a challenge is deemed complete.

**Question:** What is the timeframe for a challenged applicant to respond to the Authority's decision to suspend the application?

**Answer:** The challenged applicant has 14 days to revise and resubmit the application.

**Question:** If an applicant loses addresses to the challenge process can they add addresses that were not included in the original, submitted application?

**Answer:** No. When revising the application, the applicant shall not expand the scope or impact of the original application, nor shall the provider add any new residential addresses to the eligible project.

**Question:** What is the process for a challenged applicant to revise their suspended application?

**Answer:** The applicant shall provide a copy of the revised application to both the authority and the challenging provider by certified mail or by electronic mail or by uploading it to Development's designated web site for applications. Development shall publish the revised application on the public web site except for any information determined to be proprietary or a trade secret.

**Question:** What happens if an applicant does not respond to the authority's ruling and revise their application?

**Answer:** Any failure to respond to the notification or properly revise the application to the authority's satisfaction will be considered a withdrawal of the application.

**Question:** How long will it take the authority to respond to a revised application?

**Answer:** The broadband expansion program authority will review the revised application and decide whether to accept it or uphold the challenge within 14 days. The authority shall provide a copy of its decision to both the broadband provider that submitted the revised application and the challenging provider by certified mail or electronic mail and shall update the status of the application on the Department of Development's web site.

**Question:** Is the authority decision final or is there a chance to appeal?

**Answer:** The decision is final, and further challenges to the revised application are prohibited.

**Question:** What happens if a challenge is upheld and then the challenging provider fails to provide tier two service as described in the challenge?

**Answer:** The challenging provider, after a reasonable opportunity to be heard, may be required to do either or both of the following, in addition to being subject to other remedies available under the law:

- (A) Pay to the Department of Development the amount of the original broadband funding gap described in section 122.4020 of the Revised Code for the application that was challenged;
- (B) Comply with the requirements of any other penalties prescribed by agency rule and imposed after consultation with the authority.

**Question:** Are the slides and recording from the challenge webinar available?

**Answer:** The slides and recording from the webinar are posted under the Challenge Process

**Question:** Who are the members of the Authority?

**Answer:**

- The director of Development- Lydia Mihalik, or designee
- The director of InnovateOhio- Lt. Governor Jon Husted, or designee
- One member appointed by the Governor of Ohio- Gregory Sample
- One member appointed by the Speaker of the Ohio House- Not assigned
- One member appointed by the Ohio Senate President- Not assigned

**Question:** What constitutes satisfactory evidence?

**Answer:** Maps and other evidence that show specifically where the provider's infrastructure is and able to pass by specific addresses being challenged. Census tract level maps will not be deemed satisfactory.

**Question:** Will the challenger need to identify every individual address they are challenging?

**Answer:** Yes, a challenging provider will have to identify every individual address with street number, street name, city, zip code.

**Question:** If an incumbent provider says they plan to provide tier 2 service within 2 years and they do not, this will financially damage the application. Will there be any financial renumeration made to the applicant?

**Answer:** The Ohio Revised Code provides potential sanctions for a challenging provider's failure to provide service. The sanction amounts are required to be used for future broadband expansion grants

**Question:** Will a challenger have to post a bond to ensure their performance?

**Answer:** This will be up to the Authority to decide.

**Question:** Can challenges be made on maps?

**Answer:** No challenges are just for addresses listed in the applications.

**Question:** What is the process for monitoring successful applications after they are awarded?

**Answer:** There will be milestones in the award process that will need to be reached to unlock the different levels of funding, so all funding will not be received up front, progress payments will be made. At the end of the process, we reserve the right to do speed testing and other verification tests to ensure a grantee is providing services they were awarded to provide.

**Question:** Will the financial section of the applications be made public?

**Answer:** Applicants should mark the appropriate information for what they believe is proprietary and trade secret information. The Ohio Revised Code requires the Department of Development to review all applications for non-public record information. Those sections will not be posted. Financial information submitted to the Director of Development regarding projects is not public record under the Ohio Revised Code; however, this is a case-by-case determination made on review of the information submitted.

**Question:** We will be challenging applicants on more than one application number. Thus, will we be required to send a certified letter to the applicant, yourself, and email both for each of the application numbers, or can we include all application numbers on the same challenge form for the applicant and include all addresses being challenged across all projects on the spreadsheet?

**Answer:** Please use one form for each application number. But all the forms can go into one certified mailing envelope if they are for the same applicant. The address spreadsheets can also be in one email.

**Question:** Can all addresses being challenged, per applicant number or applicant based upon the previous answer, no matter if they are for those we already provide service to as well as those that we plan to build to in adjacent areas be included on the same spreadsheet or do you need a separate spreadsheet for those served today and another one for those that we will build to within the two year?

**Answer:** You can do it all on one spreadsheet we would just like to know which addresses are already served and which addresses you are planning on serving.

**Question:** When does the two-year build window begin? For example, is it based upon the applicant submission deadline date of November 8, 2021, or the date of award, or some other date?

**Answer:** The 2-year build window based on a successful challenge will be from when the Authority rules on the challenge and that information is made public. There is not a 2-year build requirement for awarded projects.

**Question:** What is needed on the notarized forms?

**Answer:** The notarized form should identify the part of the project that is being challenged, so that the applicant and BroadbandOhio is clear on what is being challenged and if you either already serve that area and with what speeds or your plan to.

**Question:** If we have found addresses that are incorrect how should we submit a challenge for those addresses?

**Answer:** Please submit the address as is in the spreadsheet but next to it please identify what you believe to be the correct address.